

University of San Diego

Digital USD

Center for Health Law Policy and Bioethics

Law School Centers

2020

Housing the Homeless Population During the COVID-19 Pandemic: Governments' Ethical Responsibility

Amy Holmes

Follow this and additional works at: https://digital.sandiego.edu/law_chlb_research_scholarship



Part of the [Health Law and Policy Commons](#), and the [Housing Law Commons](#)

Digital USD Citation

Holmes, Amy, "Housing the Homeless Population During the COVID-19 Pandemic: Governments' Ethical Responsibility" (2020). *Center for Health Law Policy and Bioethics*. 81.

https://digital.sandiego.edu/law_chlb_research_scholarship/81

This Article is brought to you for free and open access by the Law School Centers at Digital USD. It has been accepted for inclusion in Center for Health Law Policy and Bioethics by an authorized administrator of Digital USD. For more information, please contact digital@sandiego.edu.

Housing the Homeless Population During the COVID-19 Pandemic:
Governments' Ethical Responsibility

Amy Holmes
University of San Diego School of Law
COVID-19 Research Fellowship
Professor Dov Fox

Table of Contents

- ABSTRACT 3
- INTRODUCTION..... 4
- CASE STUDY: LOS ANGELES COUNTY 7
- ETHICAL RESPONSIBILITY 11
 - WELFARE STATE THEORY 12
 - PHILOSOPHICAL APPROACH..... 14
- CONCLUSION 16
- FUTURE CONSIDERATIONS..... 18
 - EVICTIONS..... 18
 - CARES ACT FUNDING..... 18

Abstract

COVID-19 took the world by storm in late 2019. Governments acted to ensure that their populations were as protected as possible through stay-at-home orders and the closure of stores, restaurants, and public spaces around the world. Stay-at-home orders work well when citizens have somewhere to stay, but those experiencing homelessness face the almost insurmountable challenge of staying safe and healthy without access to a safe place to stay. COVID-19 has spread rapidly through the homeless population, and as such poses a risk to the population as a whole as the world begins to reopen. Without access to adequate sanitation supplies and a place to stay if they are sick, the homeless population poses potential risks of community spread. Analyzing the housing capacity of homeless services in Los Angeles County in conjunction with COVID-19 case counts allows for an in-depth look at the demand for temporary housing, and its apparent lack of availability in L.A. County. This paper argues that under a welfare state theory and under a philosophical approach, the government has an ethical responsibility to provide temporary housing for those experiencing homelessness during the COVID-19 pandemic in order to protect not only that subset of the population, but the population as a whole.

Introduction

For people experiencing homelessness, the Coronavirus pandemic has left them scared, alone, and with even fewer housing options than they previously had access to. When states implement stay-at-home measures, those who lack homes are left to seek shelter in communal shelters that are, in normal times, over-crowded, under-staffed, and under-funded. With physical distancing requirements limiting the capacity of shelters, staff are left with tough choices about who is granted entry and who is not. Additionally, shelter staff are given new tasks, such as pre-entry screenings, additional sanitation rounds, and finding new places to house their residents.

Current literature focuses on the impact of the Coronavirus pandemic on persons experiencing homelessness, but lacks discussion on the impact housing these people could have on the spread of Coronavirus. Current research focuses on the future: increased homelessness due to worsening economic conditions stemming from the nationwide shutdown.¹ What is missing is an in-depth discussion on ‘now.’ In order to shape the future, we must focus on the current realities of the pandemic and what can be done now.

The goal of this paper is to propose a solution to the problems currently faced surrounding persons experiencing homelessness and what we can do to solve these

¹ Virginia Beard, COVID-19: Poverty, Housing, Homelessness – A Broad View and a Picture from West Michigan (2020).

with an end-goal of supporting not only persons experiencing homelessness but also the population as a whole. Because those experiencing homelessness do not have consistent access to shelter, sanitation, and a place to isolate during the Coronavirus pandemic, they are potentially serving as vessels for the virus to spread throughout communities. Shelters in most communities have been overwhelmed by the number of residents attempting to seek shelter, and due to strict social distancing requirements, are having to turn many people away.²

To find solutions to these problems, it is important to look at what has already been done in cities across North America. It is also important to note that comparing these cities is not a perfect system for producing solutions to these issues. Cities take different approaches to the issue of homelessness, with some dedicating entire units to it, and some with limited funds and uninterested staff.

In Boston, at the beginning of the U.S. outbreak, temporary shelters were built to give shelter to those who were awaiting test results or had tested positive for Coronavirus.³ With these shelters being completed within one week of the idea being proposed, only “10% of Boston’s homeless adult population contracted COVID-19 during a 4-week period.”⁴ However, as time progressed these temporary shelters again

² Telephone Interview with Erin Crosbie, Family Nurse Practitioner at Long Beach Multi-Service Center for the Homeless (Jul. 7, 2020).

³ Travis P. Baggett et al, *Addressing COVID-19 Among People Experiencing Homelessness*, 135 PUB. HEALTH REPORTS, June 2020, at 2.

⁴ *Id.* at 6.

proved insufficient in preventing community spread through homeless shelters as by the beginning of May roughly 33% of those tested (and also experiencing homelessness) were positive for Coronavirus.⁵

In Hamilton, Canada, a city with a slightly smaller population than Boston, collaborations between shelters, public health units, and local government allowed for an additional 54 shelter beds, three hotel sites, and an additional men's shelter.^{6 7} Efforts in Hamilton proved to be successful, as between March 19th and April 30th, only one resident (1.0%) of the shelters tested positive for COVID, and follow up contact tracing showed no community spread from that resident.⁸

In both Boston and Hamilton, additional housing provided safe spaces for those experiencing homelessness to shelter, while also proving successful in quelling the spread of COVID (at least temporarily) within the homeless populations of both cities. If measures such as these were expanded in the cities in which they already exist, and implemented in others, it is possible that cities would be able to continue to quell the spread of Coronavirus within their homeless populations.

⁵ *Boston's Homeless Population Has 33% Coronavirus Infection Rate, Tests Show*, CBS BOSTON, May 11, 2020.

⁶ U.S. CENSUS BUREAU, QUICKFACTS: BOSTON CITY, MASSACHUSETTS (2019).

⁷ Timothy O'Shea, M.D. et al, *Pandemic Planning in Homeless Shelters*, OXFORD UNIV. PRESS FOR THE INFECTIOUS DISEASE SOC'Y. OF AM., 2020, at 3.

⁸ *Id.* at 5.

Case Study: Los Angeles County

Los Angeles County has a population of over ten million, of which approximately 66,000 (.06%) are currently experiencing homelessness.⁹

Los Angeles County is one of the most active counties in assisting those experiencing homelessness during the Coronavirus pandemic. From the start of the U.S. outbreak, L.A. County offered guidance for those working with people experiencing homelessness.¹⁰ L.A. County released its first guidance regarding COVID-19 and persons experiencing homelessness on March 9th, 2020¹¹, at which point the state of California had only 133 confirmed cases,¹² and L.A. County had less than 30 cases.¹³ In conjunction with state efforts to implement a temporary housing program, named Project Roomkey, L.A. County has housed 3,897 persons experiencing homelessness (as of July 21, 2020) through Project Roomkey alone.¹⁴

Despite providing housing for many people experiencing homelessness, Project Roomkey has strict requirements that each participant must meet before being assigned

⁹ *2020 Greater L.A. Homeless Count Results*, L.A. HOMELESS SERVICES AUTH. (Jun. 12, 2020), <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results>.

¹⁰ *COVID-19 Guidance for L.A. Cty. Homeless Serv. Cmty*, L.A. HOMELESS SERVS. AUTH. (May 15, 2020), <https://www.lahsa.org/news?article=671-covid-19-guidance-for-los-angeles-county-homeless-services-community&ref=ces>.

¹¹ *Guidance for Homeless Serv. Agencies and Outreach Teams, L.A. CTY. DEP'T OF PUB. HEALTH*. (Mar. 25, 2020), <http://www.publichealth.lacounty.gov/media/Coronavirus/docs/homelessness/GuidanceHomelessServiceAgencies.pdf>.

¹² See News Release, CA Dep't of Pub. Health, State Officials Announce Latest COVID-19 Facts (Jul 21, 2020), <https://www.cdph.ca.gov/Programs/OPA/Pages/New-Release-2020.aspx>.

¹³ David Rosenfeld, *LA Cty. Reports First Coronavirus Death, plus 6 more cases*, DAILY BREEZE (Mar. 12, 2020), <https://www.dailybreeze.com/2020/03/11/la-county-reports-first-death-related-to-coronavirus-6-new-cases/>.

¹⁴ See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (Jul 21, 2020), https://covid19.lacounty.gov/wp-content/uploads/7.21.20_COVID-19_Update_FINAL.pdf.

to a room. To participate in this program, individuals must be over 65 years old, have at least one underlying condition, or be immune compromised, and be residents of the county in which they are seeking housing¹⁵ In addition to the participation requirements, individuals must also be referred to the program through specific channels such as a homeless service provider, health care provider, law enforcement, or other service provider.¹⁶

While Project Roomkey is a move in the right direction, the strict entry requirements exclude a significant percentage of the homeless population, and as such continues the spread of COVID-19 through those experiencing homelessness. In L.A. County at the beginning of August, there were over 500 available rooms sitting vacant.¹⁷ These additional rooms could be utilized to house those who do not quite meet the Project Roomkey entry requirements, or for others who are at risk of contracting COVID through means not listed as a risk factor for entry. Of the thirty-seven Service Planning Areas (SPAs), in L.A. County, that have access to housing through Project Roomkey, all but one vacancies at the beginning of August.¹⁸

As COVID numbers fluctuated throughout the five months between March and August of 2020, so did the number of people seeking temporary housing through L.A.

¹⁵ See New Release, Project Roomkey, <https://covid19.lacounty.gov/project-roomkey/>.

¹⁶ *Id.*

¹⁷ See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (Aug 7, 2020), https://covid19.lacounty.gov/wp-content/uploads/8.7.20_COVID-19_Update_FINAL.pdf.

¹⁸ *Id.*

County's homelessness programs. Around the beginning of May, when many people believed the 'curve' to be flattening, the number of people seeking housing through Project Roomkey seemed to be lower in relation to the number of unoccupied units.¹⁹ However, L.A. County began 'Stage 3' reopening on June 12th, in which movie theaters, gyms, and other 'high risk' businesses could begin to reopen.²⁰ As businesses began to reopen, many people experiencing homelessness likely also returned to old habits including panhandling and sleeping on the streets. As normal activities resumed, so did the spread of Coronavirus.²¹ Total COVID cases in L.A. County more than doubled between June 3rd and July 7th, with daily case counts nearly quadrupling in the same period.^{22 23} Despite Project Roomkey not adding any additional rooms during this period, the program still remained at less than full capacity.²⁴

There are many potential factors that could play into why Project Roomkey is not filling all the available rooms. These may include a desire to keep rooms open for additional people that may come forward with an immediate need for housing, a lack of

¹⁹ See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (May 8, 2020), https://covid19.lacounty.gov/wp-content/uploads/5.8.20_COVID-19_Update_FINAL.pdf.

²⁰ Sandhya Kambhampati et al, *Which C.A. Ctys. are Reopening?*, L.A. TIMES, Aug. 12, 2020.

²¹ Robert Barnes, *Rush to Reopen Led to Spike in Cases that Threaten to Overwhelm Hospitals in Some States*, WASH. POST, Jul. 5, 2020.

²² See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (Jun. 3, 2020), https://covid19.lacounty.gov/wp-content/uploads/6.3.20_COVID-19_Update_FINAL.pdf.

²³ See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (Jul. 7, 2020), https://covid19.lacounty.gov/wp-content/uploads/7.7.20_COVID-19_Update_FINAL.pdf.

²⁴ *Id.*

interest by those who qualify to be placed in the program, or an inability to track down those who qualify and to place them in the available rooms.

First, keeping rooms open for additional patients may be justified by the small number of rooms available in comparison to the large homeless population in L.A. County. On August 5th, Project Roomkey had 4,177 total rooms with 3,650 of those occupied.²⁵ L.A. County has an estimated 66,000 people experiencing homelessness.²⁶ Assuming each room holds two residents, Project Roomkey's current capacity is 8,354 people, less than 15% of the total homeless population of L.A. County. In 2016, L.A. County provided shelter for less than 30% of the homeless population, with less than .4 beds per person experiencing homelessness in the county.²⁷ Keeping rooms open for those who may come in with an immediate need allows for some additional flexibility in admitting these residents.

Second, a valid and potentially excusable justification for the vacant rooms is a lack of interest by those who qualify for the program to be placed in temporary housing. While this may be the case, it is unlikely, as over 6,000 people experiencing homeless in L.A. County are over 62 years old, and over 10,000 have some physical

²⁵ See News Release, L.A. Cty. Emergency Operations Ctr. COVID-19 Update (Aug. 5, 2020), https://covid19.lacounty.gov/wp-content/uploads/8.5.20_COVID-19_Update_FINAL.pdf.

²⁶ *2020 Greater L.A. Homeless Count Results*, L.A. HOMELESS SERVS. AUTH. (Jun. 12, 2020), <https://www.lahsa.org/news?article=726-2020-greater-los-angeles-homeless-count-results>.

²⁷ U.S. DEP'T. HOUS. & URBAN DEV., 2016 HOUS. INVENTORY CTY. & 2016 POINT IN TIME COUNT.

disability.²⁸ With such a large percentage of the L.A. County homeless population meeting the eligibility requirements it is hard to believe that there is not sufficient interest in the program to fill all available rooms.

Third, tracking down persons experiencing homelessness can be difficult, which could explain the unoccupied rooms. When the Long Beach Multi-Service Center for the Homeless was offered spaces through Project Roomkey they were given a one-week timeframe to fill their allocated spaces.²⁹ Those working at the Center had a harder time tracking down those who are more chronically homeless, and as such were not able to offer rooms to those who may have needed it, but were unable to be found.³⁰

These government programs are certainly helping the situation more than they are hurting it, but there is a lot left unanswered. What ethical responsibility does the government have to provide temporary housing? What can be done to incentive motel/hotel owners to continue to participate in programs such as Project Roomkey? Should governments focus on long-term housing solutions or continue to fund temporary solutions?

Ethical Responsibility

²⁸ *2020 Greater L.A. Homeless Count Results*, L.A. HOMELESS SERVS. AUTH. (Jun. 12, 2020), <https://www.lahsa.org/documents?id=4585-2020-greater-los-angeles-homeless-count-los-angeles-continuum-of-care-coc->.

²⁹ Telephone Interview with Erin Crosbie, Family Nurse Practitioner at Long Beach Multi-Service Center for the Homeless (Jul. 7, 2020).

³⁰ *Id.*

There are two approaches under which the government could be obligated, ethically, to provide temporary housing to those experiencing homelessness during the Coronavirus pandemic: a welfare state theory and a philosophical approach. Both theories contend that one of a government's main responsibilities is to protect its citizens.

Welfare State Theory

A welfare state is a system in which the government provides for the protection of its citizens.³¹ Under a welfare state theory, a government has a duty to protect its citizens from harm by providing essentials that they would otherwise lack.³² The United States falls into an interesting dynamic when defining itself as a welfare state. While many people think of the U.S. as a purely capitalist society, the country has one of the world's largest social welfare systems (per capita).^{33 34}

With origins stemming from the Great Depression in the 1930s, the U.S.'s welfare programs began largely as social security initiatives and unemployment insurance.³⁵ Housing has often been seen to be a vital piece of the welfare state systems in many other countries, but the U.S. seems to lack the desire to provide sufficient affordable housing through these programs. Many of the issues that arise through homelessness

³¹ *Welfare State*, ENCYCLOPEDIA BRITANNICA (2015).

³² Ida Borg, *Hous., Poverty, & the Welfare State*, STOCKHOLM UNIVERSITY, 2018, at 13.

³³ Tim Worstall, *America has the World's Largest Social Welfare State*, FORBES, Oct. 8, 2015.

³⁴ Irwin Garfinkel, et al, *Welfare State Myths and Measurements*, CAPITALISM & SOC'Y., 2015.

³⁵ J. Craig Jenkins, et al, *Soc. Protest, Hegemonic Competition, and Soc. Reform*, 54 AM. SOCIOLOGICAL REVIEW 891.

today stem from historical issues within the housing market, which were brushed over during budget cuts and reassignments in the 1980s.³⁶ Believing homelessness to be a short-term problem, grants were distributed but poorly used.³⁷ Had these departments instead focused on building houses and developing programs to help those who were homeless to get reestablished, a stronger temporary housing system could have been put in place.³⁸ However, these issues were not addressed and homelessness continued to grow into the widespread issue many view it as today. Compounded with the Coronavirus pandemic, the homelessness crisis is worsening, and there is an increasing need for (at least) temporary housing.

To place housing within the welfare state implies that housing is a social right to which all citizens are entitled, as they are to programs such as social security. It is also important to note that housing can be both part of the welfare state and part of the free market at the same time. Ensuring access to housing through the government does not exclude one from eventually moving to accessing housing through the housing market.

As one of the main goals of a welfare state is to provide protection for its citizens,³⁹ providing housing is one vital mechanism through which a government can achieve this goal.

³⁶ Victoria C. Spetter, *As Gov't. Assistance Decreases, Homelessness Increases*, 3 JOURNAL LAW & SOC. CHANGE 111, 135.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Welfare State*, ENCYCLOPEDIA BRITANNICA (2015).

Philosophical Approach

Thomas Hobbes, in *Leviathan*, famously argued for a government that would provide safety through law & order.⁴⁰ Hobbes was a large proponent of security through government, and as such he would likely argue that government provided housing is a temporary necessity to provide security for those experiencing homelessness during the Coronavirus pandemic. Housing is, in most respects, security. Having a place to rest, relax, and recuperate gives security to those who were previously moving between shelters or sleeping in the streets. Most people think of their home as a safe and secure place to come home to at night, but for those who do not have a home, they also do not have security. If, as Thomas Hobbes argues, one of the government's main goals is security for its citizens, providing housing should fall into that category as well.

As with the welfare state argument, providing housing for those experiencing homelessness does not just offer security to those receiving housing, but also to those who are no longer exposed to those without housing. It provides added security for the population as a whole when, during a global pandemic, everyone has access to sanitation mechanisms, and a safe place to quarantine themselves should they need it.

While the U.S. government is clearly not the "Leviathan" Hobbes imagined, it is a country in which the government provides necessary security for its people. Through

⁴⁰ THOMAS HOBBS, *LEVIATHAN* (1588-1679).

mechanisms such as social security, Medicare, and unemployment payments, the government provides security for those who need it most – so why not provide additional, (at least) temporary housing for those who need it.

Following Hobbes' theory of the government as a protector ,and provider, of security, the government has an ethical responsibility to provide housing for those experiencing homelessness during the Coronavirus pandemic.

Conclusion

Looking at the number of people experiencing homelessness during the Coronavirus pandemic truly shows the increased need for government provided housing. While ideally this would be long-term, sufficient housing plans for those experiencing homelessness, it is essential that, at a minimum, temporary housing is provided for the extent of the pandemic. Providing temporary housing for people experiencing homelessness protects not only the homeless population but also those who may come in contact with someone experiencing homelessness. With current physical distancing restrictions limiting the number of residents allowed into shelters each night, those with no where else to go are left to sleep at bus stops, in parks, and in doorways. With no shelter access, and public restrooms closed due to the pandemic, those left out of shelters have extremely limited access to sanitation, furthering their risk of exposure to Coronavirus.⁴¹

At risk because of these circumstances are not only those experiencing homelessness, but also those who may need to use the facilities that persons experiencing homelessness are calling home at night. Essential employees are still utilizing public transit (where available) and come into contact with surfaces that may be carrying Coronavirus. Government provided temporary housing would solve many

⁴¹ Telephone Interview with Erin Crosbie, Family Nurse Practitioner at Long Beach Multi-Service Center for the Homeless (Jul. 7, 2020).

of these issues. While there is not sufficient data available to determine if community spread between housed citizens and people experiencing homelessness is significantly impacted by these situations, it should be of enough concern to the government and citizens to move in the direction of creating and supplying new, temporary housing to those who need it most.

This temporary housing would allow people experiencing homelessness access to adequate sanitation, a safe place to quarantine themselves if they become symptomatic or have been in contact with someone who has tested positive for Coronavirus, and piece of mind, knowing that they have somewhere safe to return to each night.

There is a desperate need for (at least) temporary housing across the county, and the two theories discussed above provide two methods for achieving this goal. The theories discussed above provide two arguments as to why the government does have an ethical responsibility to house those experiencing homelessness during the Coronavirus pandemic.

Future Considerations

Evictions

As the Coronavirus pandemic continues to plague the country and unemployment continues to rise, many Americans face the fear of eviction. The federal moratorium on evictions expired at the end of July, leaving about 12 million people in eviction limbo.⁴² California governor Gavin Newsom implemented a California-wide eviction moratorium on March 27th which was originally set to last until May 31st, but has since been extended until September 30th.^{43 44} As these state and federal programs expire many Americans will likely be evicted leading to an uptick in homelessness across the country. The pandemic is not going anytime soon, and with evictions looming, there will be an increased need in the near future for additional housing for those experiencing homelessness.

CARES Act Funding

The CARES act is a \$2.2 trillion stimulus bill passed by U.S. Congress and signed into law in March 2020.⁴⁵ Federal funds have been made available to states through the

⁴² Megan Henney, *Millions of Americans at Risk of Eviction After Moratorium Expired*, FOX BUSINESS, Aug. 12, 2020.

⁴³ Cal. Exec. Order No. 37-20 (Mar. 27, 2020).

⁴⁴ Cal. Exec. Order No. 71-20 (Jun. 30, 2020).

⁴⁵ Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. § 116 (2020).

U.S. Department of Housing and Urban Development for assorted purposes.⁴⁶ One listed purpose is public housing.⁴⁷ \$685 million was allocated to the public housing operating fund in order to maintain normal operations.⁴⁸ This allocation also allows for agencies to combine these funds with their current funds to respond to the Coronavirus pandemic.⁴⁹ This general statement would allow agencies to construct new housing, as long as they use all of the funding given to them prior to the end of 2020.⁵⁰ This limitation may prove problematic if states cannot allocate funding in a sufficient time frame. If states cannot spend this money by the end of the year they will lose access to the funds. It is essential that states who have received funding through this allocation spend it (hopefully wisely) before the deadline.

CARES Act funds could be incredibly useful in providing housing for those experiencing homelessness. What states choose to do with these funds is, ultimately, up to them, but given the growing intensity of the homelessness crisis, building additional housing would likely prove incredibly beneficial to states and their residents.

⁴⁶ *Id.*

⁴⁷ See News Release, CARES Act Analysis (Apr. 15, 2020) <https://www.ncsl.org/ncsl-in-dc/publications-and-resources/cares-act-analysis-housing-funding.aspx#Public%20Housing>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*